

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/117,246 12/03/98 LUDEVID

D 50062/004001

HM22/0131

EXAMINER

KRISTINA BIEKER BRADY
CLARK & ELBING
176 FEDERAL STREET
BOSTON MA 02110

LACOURCIERE, K

ART UNIT	PAPER NUMBER
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1635

DATE MAILED:

01/31/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/117,246	Applicant(s) LUDEVID ET AL.
	Examiner Karen A. Lacourciere	Art Unit 1635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02 June 2000.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims 1-41 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) Notice of References Cited (PTO-892)
- 16) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) Interview Summary (PTO-413) Paper No(s). _____
- 19) Notice of Informal Patent Application (PTO-152)
- 20) Other: _____

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DETAILED ACTION

Claim Objections

Claims 4-22 and 28-41 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim can not depend on another multiply dependent claim. See MPEP § 608.01(n). Accordingly, the claims 4-22 and 28-41 have not been further treated on the merits.

Election/Restrictions

The restriction requirement mailed 04-27-00 is hereby withdrawn in favor of the new restriction requirement set forth below. The prior restriction requirement is withdrawn because the restriction was set forth under 35 U.S.C. 121 (U.S. practice) rather than under 35 U.S.C. 372 (lack of unity) as is proper for a national stage filing under 35 U.S.C. 371 and is set forth without claims 4-22 and 28-41, which are properly withdrawn due to improper form (as stated above in the claim objections).

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-3 and 23, drawn to an oligonucleotide comprising a concatenation encoding a P-K polypeptide.

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Group II, claim(s) 26 and 27, drawn to a modified gamma-zein.

The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

Claim 1 is drawn to an oligonucleotide comprising at least one concatenation coding for a polypeptide with the formula (P-K)_n. Akitaya et al. disclose a polynucleotide comprising a concatenation encoding a polypeptide with the formula (P-K)_n (see for example SEQ ID NO:186). Claim 1 is not free of the prior art and, therefore, a special technical feature does not link the claims of the instant application.

Further, the invention of Group I is different than the invention of Group II because the groups are drawn to different products. For example, Group I is drawn to oligonucleotides, which are composed of nucleotides, which are materially different than the products of Group II, which is drawn to polypeptides, which are composed of amino acids.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any

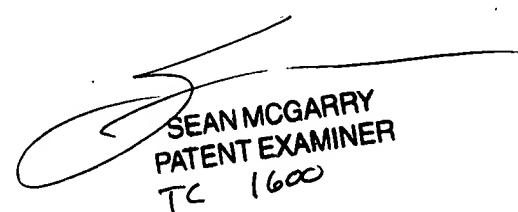
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amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karen A. Lacourciere whose telephone number is (703) 308-7523.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John LeGuyader can be reached at (703) 308-0447. The fax phone number for this Group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.



SEAN MCGARRY
PATENT EXAMINER
TC 1600

Karen A. Lacourciere

January 17, 2001